

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10847 of 2016

and

W.M.P.Nos.9471 & 21135 of 2016

K.Velusamy

... Petitioner

vs

1.The Director of Town Panchayats
Kuralagam Buildings, Chennai - 108.

2.The Executive Officer,
Konganapuram Town Panchayat,
Konganapuram,
Salem District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the second respondent issued in Na.Ka.No.470/2013/A1 dated 02.03.2016 and quash the same and consequently to restore the salary as proceedings of the second respondent dated 30.07.2013 issued in Na.Ka.No.470/2013 by refunding the already recovered amount from the petitioner till the restoration.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondents : Mr.A.Srijayanthi
Special Government Pleader

ORDER

The order of re-fixation and a consequential order of recovery issued by the second respondent in proceedings dated 02.03.2016, is under challenged in this writ petition.

2. The writ petitioner is employed as Meter Reader in second respondent Town Panchayat. Accordingly, to the writ petitioner, his pay fixation was done by the authorities, as per the Government order and Rules in force. There was no

misrepresentation on the part of the writ petitioner at the time of fixation of the pay, and he was continuously receiving the scale of pay as fixed by the authorities competent. While so, the impugned order has been passed in proceedings dated 02.03.2016, by stating that there was audit objection in respect of the revision of pay as applicable to the writ petitioner and accordingly, the pay of the writ petitioner was revised and consequently, recovery proceedings had also been issued.

3. The learned counsel for the petitioner states that the writ petitioner is working as Grade III employee and therefore there was no misrepresentation on his part at the time of fixation of his pay. Before issuing the impugned order of re-fixation pay and recovery, no show cause notice has been issued to the writ petitioner. Thus, the impugned order is in violation of principles of natural justice.

4. At the out set, this Court is of an opinion that the impugned order cannot be sustained as admittedly it has been issued without providing, an opportunity to employee concerned. This apart the recovery of excess payment cannot be made from the employees belonging to Class-III and Class-IV service. Even, if there is an error in respect of the fixation of pay, such error can be corrected by the competent authority, while revising the scale of pay with reference to the Government order or Rules in force. However, the excess payment if any paid cannot be recovered from the employees working in Grade III post in view of the legal principles settled by the Hon'ble Supreme Court of India in the case of State of Punjab and others v. Rafiq Masih (White Washer) & others reported in (2015) 4 SCC 334. The relevant 18th paragraph of the said Judgment is extracted here under:

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

5. The Hon'ble Apex Court in sub clause (i) of the paragraph 18 of the above said Judgment, held that recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) is impermissible therefore, as per the above Judgment of the Apex Court excess payment if any made to the employees belonging to Class III and Class IV cannot be recovered at all.

6. This being the principles settled by the Supreme Court of India, this Court is of an opinion that the recovery of the excess amount from the petitioner is impermissible. However, it is made clear that the fixation of pay can be corrected by the competent authority and correct pay as applicable shall be paid to the writ petitioner.

7. In this view of the matter, the impugned order passed by the second respondent proceedings in Na.Ka.No.470/2013/A1 dated 02.03.2016, is quashed. However, the authority concerned is at liberty to fix the pay after correcting the same.

8. Accordingly, the writ petition stands partly allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nmm/stm

To

1.The Director of Town Panchayats
Kuralagam Buildings, Chennai - 108.

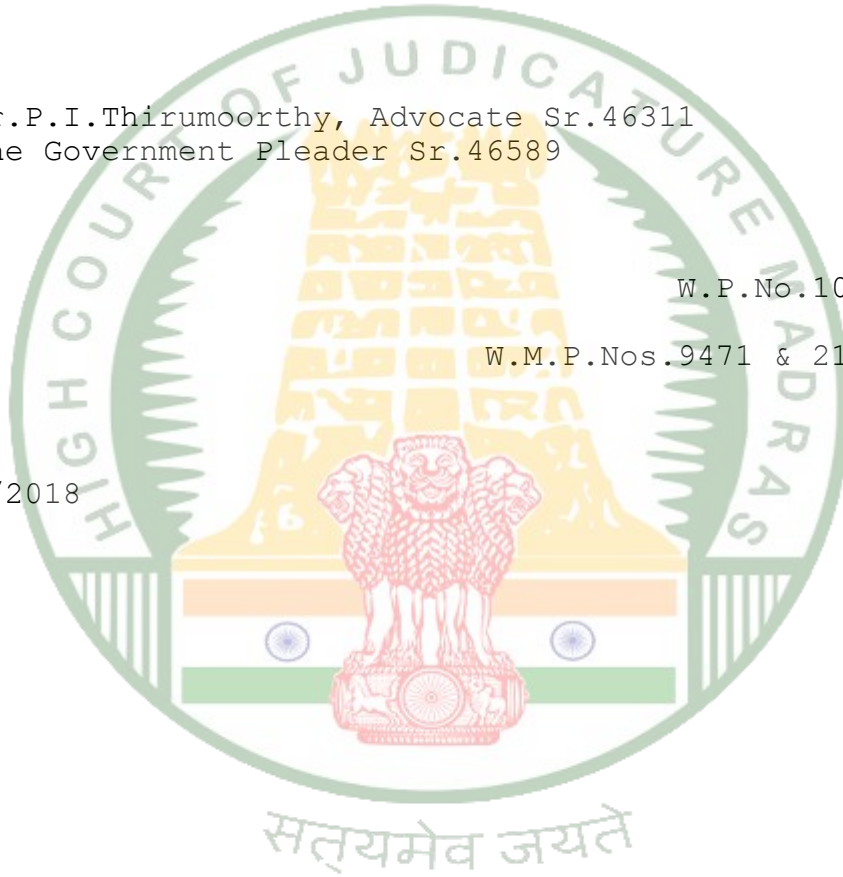
2.The Executive Officer,
Konganapuram Town Panchayat,
Konganapuram, Salem District.

+1cc to Mr.P.I.Thirumoorthy, Advocate Sr.46311
+1cc to the Government Pleader Sr.46589

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srg 10/08/2018



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